

AGREEMENT TO MAKE SUBDIVISION IMPROVEMENTS
FOR CLASS 1 SUBDIVISION
BETWEEN COUNTY AND OWNER

THIS AGREEMENT, made and entered into by and between the COUNTY OF EL DORADO, a political subdivision of the State of California, (hereinafter referred to as "County"), and TOLL LAND XXIII LIMITED PARTNERSHIP, a limited partnership, duly qualified to conduct business in the State of California, whose principal place of business is 3103 Philmont Avenue, Huntingdon Valley, Pennsylvania 19006, and whose local office address is 1361 Elmores Way, El Dorado Hills, California 95762 (hereinafter referred to as "Owner"); concerning THE PROMONTORY VILLAGE NO. 5 – UNIT 3, TM 98-1356 (hereinafter referred to as "Subdivision"); the Final Map of which was filed with the El Dorado County Board of Supervisors on the _____ day of _____, 2006.

RECITALS

Owner is vested with fee title to Subdivision; a tract of land located in the County of El Dorado, State of California, and described as The Promontory Village No. 5 - Unit 3. Owner desires to construct on said property certain public improvements as hereinafter described, in connection with the Subdivision.

In consideration for the complete construction and dedication of all the public improvements specified in this Agreement, the approval and acceptance by County's Board of Supervisors, and the Final Map to be filed and recorded, the parties agree as follows:

AGREEMENT

OWNER WILL:

1. Make or cause to be made all those public improvements in Subdivision required by Section 16.16.010 of the El Dorado County Ordinance Code (hereinafter referred to as "Code") and shown or described in the improvement plans, specifications and cost estimates entitled **The Promontory, Village 5, Unit 3** which were approved by the County Engineer, Department of Transportation, on July 15, 2005. Attached hereto are Exhibit A, marked "Schedule of General Sitework Improvements;" Exhibit B, marked "Schedule of Surface Improvements;" Exhibit C, marked "Schedule of Storm Drainage Improvements," Exhibit D, marked "Schedule of Sanitary Sewer Improvements;" Exhibit E, marked "Schedule of Water Improvements," Exhibit F, marked "Schedule of Underground Power and Telephone Improvements," Exhibit G, marked "Schedule of Erosion Control Improvements," and Exhibit H, marked "Schedule of Consultant Fees & Services," all of which are incorporated herein and made by reference a part hereof. The Exhibits describe quantities, units and costs associated with the improvements to be made.

2. Prior to commencing construction, obtain all necessary environmental clearances, acquire any necessary right-of-way and obtain any necessary permits from any outside agencies.

3. Complete the Subdivision improvements contemplated under this Agreement within two (2) years from the date that the Subdivision Final Map is filed with the El Dorado County Board of Supervisors.

4. Install or cause to be installed, modify or cause to be modified, any and all erosion and sediment control features, whether temporary or permanent, deemed necessary by the County Engineer to ensure compliance with the Clean Water Act, the Statewide General Permit, and County's, Grading, Erosion and Sediment Control Ordinances. Failure to comply with this provision shall constitute a material breach of this Agreement.

5. Post security acceptable to County as provided in Section 16.16.050 of the Code. In the event that the Sureties issuing the posted securities are subsequently downgraded to a rating unacceptable to County in its sole discretion, Owner shall, upon twenty (20) days written notice by County, post replacement securities that are acceptable to County.

6. Provide for and pay the costs of related civil engineering services, including the costs of inspection and utility relocation when required, and attorneys' fees, costs, and expenses of legal services.

7. Provide deposit for and pay to County all costs of construction oversight, inspection, administration and acceptance of the work by County in accordance with the County Engineer Fee Schedule adopted by Resolution of the Board of Supervisors of El Dorado County.

8. Have as-built plans prepared by a civil engineer acceptable to County's Department of Transportation and filed with the Department of Transportation as provided in Section 16.16.060 of the Code.

9. Repair at Owner's sole cost and expense, any defects, in workmanship or materials, which appear in the work within one (1) year following acceptance of the work by County.

10. To the fullest extent allowed by law, defend, indemnify and hold County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any other economic or consequential losses, which are claimed to or in any way arise out of or are connected with Owner's work, operation, construction of the improvements, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Owner, any Contractor(s), Subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Owner to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

This duty to indemnify is separate and apart from any insurance requirements and shall not be limited thereto.

11. Enter into another agreement with County for all road improvements to be performed on County property. Such agreement shall also include a requirement that Owner furnish insurance and bonds that comply with the standard County insurance and bonding requirements in the amounts stated, to be approved by the County's Risk Management Division.

12. Provide continuous, sufficient access to Owner's successors and assigns, including but not limited to its Surety and Surety's agents, to the Subdivision to enable the public improvements to be constructed and completed. Access shall be continuous until completion of said public improvements, and release by County of the security underlying this Agreement.

13. Agree that said agreement to provide continuous, sufficient access is irrevocable and shall run with the land and shall be binding upon and inure to the benefit of the heirs, successors, assigns and personal representatives of Owner.

COUNTY WILL:

14. Upon execution of this Agreement and receipt of good and sufficient security as required by Section 16.16.050 of the Code, and upon compliance with all requirements of law, including all County ordinances, approve the Final Map of the Subdivision.

15. Upon receipt of a Certificate from County's Director of Transportation stating that a portion of the public improvements agreed to be performed herein has been completed, describing generally the work so completed and the estimated total cost of completing the remainder of the public improvements agreed upon to be performed herein, accept new security as provided in Section 16.16.040 of the Code.

16. Release the security posted in accordance with Sections 16.16.040 and 16.16.052 of the Code.

17. Require Owner to make such alterations, deviations, additions to, or deletions from, the improvements shown and described on the plans, specifications, and cost estimates as may be deemed by County's Director of Transportation to be necessary or advisable for the proper completion or construction of the whole work contemplated.

18. Require Owner to maintain, and to make such alterations, deviations, additions to, or deletions from, the project erosion control features shown and described on the plans, specifications and cost estimates and the Storm Water Pollution Prevention Plan (SWPPP) as may be deemed by County's Director of Transportation to be necessary or advisable for compliance with the Clean Water Act, Statewide General Permit requirements and County's Grading, Erosion and Sediment Control Ordinances.

19. Upon completion of the public improvements agreed to be performed herein, adopt a resolution accepting or rejecting the streets of said Subdivision into County's road system for maintenance.

20. Retain a portion of the security posted in the amount of ten percent (10%) of the estimated cost of all of the improvements for one (1) year following acceptance of the work by County to secure the repair of any hidden defects in workmanship or materials which may appear.

21. Require Owner to pay County for costs, expenses and reasonable attorneys' fees to be paid by Owner should County be required to commence an action to enforce the provisions of this Agreement, to enforce the security obligations provided herein, and all attorneys' fees, costs, and expenses of litigation incurred by County even if Owner subsequently proceeds to complete the work.

ADDITIONAL PROVISIONS:

22. The estimated cost of installing all of the improvements is **THREE MILLION EIGHT HUNDRED THIRTY-EIGHT THOUSAND ONE HUNDRED SIXTY-FOUR DOLLARS AND 44/100 (\$3,838,164.44).**

23. Owner shall conform to and abide by all Federal, State and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshall, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to the improvement plans and specifications and cost estimates, is to be construed to permit work not conforming to these codes.

24. Inspection of the work and/or materials or statements by any officer, agent, or employee of County indicating that the work or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of said work and/or materials, or payments therefore, or any combination or all of these acts, shall not relieve Owner of its obligation to fulfill this Agreement as prescribed; nor shall County be stopped from bringing any action for damages arising from the failure to comply with any terms and conditions hereof.

25. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

26. Neither this Agreement, nor any part thereof may be assigned by Owner without the express written approval of County.

27. All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to County shall be in duplicate and addressed as follows:

County Of El Dorado
Department Of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn.: James W. Ware,
Deputy Director,
Transportation Planning and Land Development

County Of El Dorado
Department Of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn.: Tim Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Owner shall be addressed as follows:

TOLL LAND XXIII Limited Partnership
1361 Elmores Way
El Dorado Hills, CA 95762
Attn.: Mark Davis,
Vice President

or to such other location as Owner directs.

28. The County officer or employee with responsibility for administering this Agreement is James W. Ware, Deputy Director, Transportation Planning and Land Development, Department of Transportation, or successor.

29. Any action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

30. The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

--COUNTY OF EL DORADO--

By: James R. Sweeney
JAMES R. SWEENEY, Chairman
Board of Supervisors
"County"

Dated: 8/22/06

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Dated: 8/22/06

-- TOLL LAND XXIII LIMITED PARTNERSHIP
A California Limited Partnership --

By: TOLL CA GP Corp.,
A California Corporation
General Partner

By: Mark O. Davis
Mark O. Davis
Vice President
"Owner"

Dated: 4-10-06

By: _____
Corporate Secretary

Dated: _____

STATE OF CALIFORNIA

COUNTY OF EL DORADO

On this 10th day of April, 2006, before me a Notary Public, personally appeared Mark O. Davis, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to this instrument, and acknowledged that he (~~she or they~~) executed it.

WITNESS my hand and official seal.

Marlene Coates

Notary Public in and for said County and State

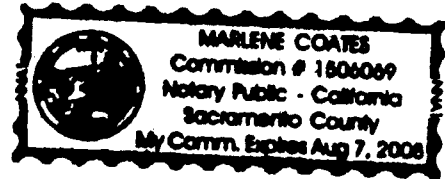


Exhibit A

SCHEDULE OF GENERAL SITEWORK IMPROVEMENTS

Owner agrees to perform general sitework improvements in **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of General Sitework Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
Clear & Grub	16.8	AC	\$2,500.00	\$42,000.00
Excavation	70,737	CY	\$5.00	\$353,685.00
Rockery Retaining Walls	36,981	SF	\$25.00	\$924,525.00

Total General Sitework Improvements Cost	\$1,320,210.00
Plus 10% Contingency	\$132,021.00
Estimated Total General Sitework Improvements Cost	\$1,452,231.00

Exhibit B

SCHEDULE OF SURFACE IMPROVEMENTS

Owner agrees to improve all streets and roads for dedication upon the final map of **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Surface Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
3"AC / 8"AB	85,412.98	SF	\$2.80	\$239,156.34
Type 1 Rolled Curb and Gutter	4,701.23	LF	\$15.00	\$70,518.45
Type 2 Curb and Gutter	2,083.83	LF	\$15.00	\$31,257.45
Type 3 Curb	28	LF	\$15.00	\$420.00
4" PCC Sidewalk	18,804.92	SF	\$5.00	\$94,024.60
Sawcut Existing Pavement	48	LF	\$100.00	\$4,800.00
Street Sign Installation	1	EA	\$500.00	\$500.00
Stop Sign & Pavement Markings	1	EA	\$750.00	\$750.00
Remove Existing Barricade & Gate	3	EA	\$1,000.00	\$3,000.00
Entrance Gate w/ Intercom & Knox Key	1	EA	\$200,000.00	\$200,000.00
Landscaping	14,482.20	SF	\$2.25	\$32,584.95

Total Surface Improvements Cost	\$677,011.79
Plus 10% Contingency	\$67,701.18
Estimated Total Surface Improvements Cost	\$744,712.97

Exhibit C

SCHEDULE OF STORM DRAINAGE IMPROVEMENTS

Owner agrees to install storm drainage improvements for **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Storm Drainage Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
12" HDPE Storm Drain Pipe	65	LF	\$35.00	\$2,275.00
18" HDPE Storm Drain Pipe	778	LF	\$45.00	\$35,010.00
18" RCP Storm Drain Pipe	38.29	LF	\$45.00	\$1,723.05
24" HDPE Storm Drain Pipe	39	LF	\$55.00	\$2,145.00
48" Storm Drain Manhole	5	EA	\$3,000.00	\$15,000.00
36" O.C.P. w/ Grated Top	2	EA	\$2,000.00	\$4,000.00
Fabric Lined Ditches	3,927	LF	\$5.00	\$19,635.00
Shotcrete Lined Ditch	282	LF	\$10.00	\$2,820.00
Rock Outlet Protection (T-504)	3	EA	\$750.00	\$2,250.00
Type 'B' Drainage Inlet	3	EA	\$2,000.00	\$6,000.00
Type 'GO' Drainage Inlet	5	EA	\$2,500.00	\$12,500.00
TV Storm Drain Pipe	920.29	LF	\$2.00	\$1,840.58

Total Storm Drainage Improvements Cost	\$105,198.63
Plus 10% Contingency	\$10,519.87
Estimated Total Storm Drainage Improvements Cost	\$115,718.50

Exhibit D

SCHEDULE OF SANITARY SEWER IMPROVEMENTS

Owner agrees to install the sewer collection and disposal system for **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Sanitary Sewer Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
6" PVC SDR-26	1,182	LF	\$56.00	\$66,192.00
6" PVC SDR-35	2,270	LF	\$56.00	\$127,120.00
48" Sanitary Sewer Manhole	16	EA	\$3,500.00	\$56,000.00
60" Sanitary Sewer Manhole	2	EA	\$3,500.00	\$7,000.00
Remove Ex. Clean-Out & Connect to Ex. Sewer	2	EA	\$500.00	\$1,000.00
4" Gravity House Service	33	EA	\$1,300.00	\$42,900.00
Back Water Valves	16	EA	\$500.00	\$8,000.00
6" AB Sewer Access Road	2,110	LF	\$1.00	\$2,110.00
TV Sewer Pipe	3,452	LF	\$2.00	\$6,904.00

Total Sanitary Sewer Improvements Cost	\$317,226.00
Plus 10% Contingency	\$31,722.60
Estimated Total Sanitary Sewer Improvements Cost	\$348,948.60

Exhibit E

SCHEDULE OF WATER IMPROVEMENTS

Owner agrees to install the water supply and distribution system in **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Water Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
8" PVC C-900 (CL 150) Including Fittings	3,205	LF	\$40.00	\$128,200.00
1" Air Release Valve	2	EA	\$2,000.00	\$4,000.00
Fire Hydrant Assembly	9	EA	\$3,000.00	\$27,000.00
¾" Water Service	33	EA	\$850.00	\$28,050.00
1" Irrigation Service	1	EA	\$1,000.00	\$1,000.00
4" PVC Irrigation Sleeves	264	LF	\$10.00	\$2,640.00
Remove Ex. Blow Off & Connect to Ex. Water	3	EA	\$500.00	\$1,500.00

Total Water Improvements Cost	\$192,390.00
Plus 10% Contingency	\$19,239.00
Estimated Total Water Improvements Cost	\$211,629.00

Exhibit F

SCHEDULE OF UNDERGROUND POWER AND TELEPHONE IMPROVEMENTS

Owner agrees to install utility improvements in The Promontory, Village 5, Unit 3 Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Utility Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
Joint Trench / Utilities	33	LOTS	\$8,000.00	\$264,000.00

Total Utility Improvements Cost	\$264,000.00
Plus 10% Contingency	\$26,400.00
Estimated Total Utility Improvements Cost	\$290,400.00

Exhibit G

SCHEDULE OF EROSION CONTROL IMPROVEMENTS

Owner agrees to install erosion control improvements in **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule of Erosion Control Improvements:

Item Description	Quantity	Units	Unit Cost	Total Cost
Erosion Control	1	JOB	LUMP SUM	\$180,000.00
SWPPP Implementation	1	LS	\$50,000.00	\$50,000.00
Dust Control	1	LS	\$40,000.00	\$40,000.00

Total Erosion Control Improvements Cost	\$270,000.00
Plus 10% Contingency	\$27,000.00
Estimated Total Erosion Control Improvements Cost	\$297,000.00

Exhibit H

SCHEDULE OF CONSULTANT FEES & SERVICES

Owner agrees to pay for consultant fees and services in **The Promontory, Village 5, Unit 3** Subdivision required by the El Dorado County Subdivision Ordinance in accordance with the plans and specifications thereof approved by the County Engineer, and as set forth in the following Schedule Consultant Fees & Services:

Item Description	Quantity	Units	Unit Cost	Total Cost
Project Administration	2	%	\$3,146,036.42	\$62,920.73
Construction Staking	5	%	\$3,146,036.42	\$157,301.82
Construction Engineering	5	%	\$3,146,036.42	\$157,301.82

Estimated Total Consultant Fees & Services Cost

\$377,524.37

CERTIFICATION OF PARTIAL COMPLETION OF SUBDIVISION IMPROVEMENTS

I hereby certify that the following improvements in the **The Promontory, Village 5, Unit 3** Subdivision have been completed, to wit:

	<u>Total Amount</u>	<u>Percent Complete</u>	<u>Remaining Amount</u>
General Sitework	\$ 1,452,231.00	0%	\$ 1,452,231.00
Surface Improvements	\$ 744,712.97	0%	\$ 744,712.97
Storm Drainage	\$ 115,718.50	0%	\$ 115,718.50
Sanitary Sewer	\$ 348,948.60	0%	\$ 348,948.60
Water	\$ 211,629.00	0%	\$ 211,629.00
Underground Power and Telephone Improvements	\$ 290,400.00	0%	\$ 290,400.00
Erosion Control	\$ 297,000.00	0%	\$ 297,000.00
Consultant Fees/Svc.	\$ 377,524.37	0%	\$ 377,524.37
Totals	\$ 3,838,164.44		\$ 3,838,164.44

I estimate the total cost of completing the remainder of the improvements agreed to be performed by the Owner to be **Three Million Eight Hundred Thirty-Eight Thousand One Hundred Sixty-Four Dollars and 44/100 (\$3,838,164.44)**.

The Performance Bond is for the amount of **Three Million Eight Hundred Thirty-Eight Thousand One Hundred Sixty-Four Dollars and 44/100 (\$3,838,164.44)**. (100% of Remaining Amount Total, Column 3)

The Laborers and Materialmens Bond is for the amount of **One Million Nine Hundred Nineteen Thousand Eighty-Two Dollars and 22/100 (\$1,919,082.22)**. (50% of the Total Amount, Column 1)

DATED: 4/25/2006



[Signature]
 David D. Sagan, RCE 60506
 C.T.A. / R.E.Y., Inc.
 105 Lake Forest Way, Suite C
 Folsom, CA 95630

ACCEPTED BY THE COUNTY OF EL DORADO

DATED: 4/27/06

[Signature]
 Richard W. Shepard, P.E.
 Director of Transportation